

STATE OF NEW JERSEY

Board of Public Utilities

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ENERGY

IN THE MATTER OF AMENDMENT TO THE)
THIRD PARTY SUPPLIER AGREEMENT) DECISION AND ORDER
DOCKET NO. EX03030185

BY THE BOARD:

By Order dated August 17, 1999, the Board of Public Utilities ("Board") approved the Master Third Party Supplier ("TPS") Agreement, version 13 ("TPS Agreement"), to be used by all four of the New Jersey electric distribution companies ("EDCs"), including Public Service Electric & Gas Company ("PSE&G"), Jersey Central Power & Light Company ("JCP&L") formerly GPU Energy, Conectiv Power Delivery ("Conectiv") formerly Conectiv Electric, and Rockland Electric Company ("Rockland"), when entering into a commercial relationship with third party suppliers serving the New Jersey retail electric marketplace in the EDC's service territory. As part of the TPS Agreement, certain creditworthiness standards were adopted that must be met by each TPS in order to provide financial protection to the EDCs and ratepayers.

By way of background, the current TPS Agreement has been used successfully by the EDCs and TPSs since 1999, and its purpose is to protect the EDCs and customers from the possibility of default by a TPS. However, in response to a concern raised by the retail marketers and due to changes in the retail marketplace and in the way New Jersey procures Basic Generation Service ("BGS"), these creditworthiness provisions no longer accurately reflect current risk to the EDCs.

In 1999, the EDCs were responsible for procuring the supply to meet their BGS requirements. At that time, the EDCs were at risk for a TPS default. The risk involved included the difference between the price per kilowatt hour ("kwh") charged by the EDC and the cost (per kwh) of supplying incremental, unplanned load. Since then, the Board has approved a BGS Auction process for procuring BGS supply and has authorized a Pennsylvania-New Jersey-Maryland Interconnect ("PJM")-based hourly pricing structure for larger customers, which significantly diverts the default risk away from the EDCs and places it upon the wholesale BGS suppliers. By Order dated May 8, 2003, the Board determined that the present creditworthiness standards found in the TPS Agreement no longer accurately reflect the current level of risk to the EDCs and that the TPS Agreement was in need of amendment. The Board further determined that the TPS Agreement should be updated to remove outdated language and terminology, and also to accurately portray current market conditions and procurement practices. Therefore, in its May 8, 2003 Order, the Board directed the EDCs to file a amended TPS Agreements and Appendices reflecting and limited to changes to these areas, for comment by interested parties.

On May 14, 2003, Rockland filed its amended TPS Agreement with the Board. Rockland's Agreement is substantially different from the other EDCs' TPS Agreements because some of its New Jersey customers are served by the Pennsylvania-New Jersey-Maryland Interconnect ("PJM"), while others are served by the New York Independent System Operator ("NYISO"). By May 15, 2003, the three other EDCs, PSE&G, JCP&L, and Conectiv, filed their amended TPS Agreements with the Board, all three of which are very similar in language. The filings were distributed to the industry via the Board's electronic list server and through the TPS Service List.

The EDCs' proposed amendments include: the addition of definitions for Commercial Industrial Energy Pricing ("CIEP") customers and Fixed Price ("FP") customers; a change to the definition of Interest Index, in order to reflect current market conditions; removal of Year 2000 ("y2k") language; changes to the standards governing the initial determination of creditworthiness of a TPS, to reflect current market practices; reduction of the cure period for TPS default from ten to three days; reduction of the written notice period for a lapse of creditworthiness by a TPS from ten to three days; added language to the format for the submission of credit notices; added language to protect the non-public credit support data of a TPS that is submitted to the EDC; added creditworthiness standards for TPSs serving CIEP customers, FP customers, and for TPSs serving both; any necessary changes to the EDCs' name, contact information, Independent Systems Operator affiliation in the case of Rockland; and additional language changes.

Comments were received from: Reliant Resources, Inc. ("Reliant"); Constellation NewEnergy, Inc. ("Constellation"); Strategic Energy, L.L.C. ("Strategic"), and; the Mid-Atlantic Power Supply Association ("MAPSA"). The comments generally proposed reducing the creditworthiness standards and credit obligations to the EDCs, and changing the EDCs' proposed cure period for default situations from three days to five or ten days. Some commenters also addressed the 14-day customer rescission period for canceling a contract with a TPS, which has always been limited to residential customers only. Specifically, the commenters positions were as follows:

- Reliant is requesting five business days for the defaulting party to remedy the default situation and/or resolve a dispute, instead of the three days proposed by the EDCs. Reliant also wants language in the TPS Agreement that states the 14-day rescission policy is only applicable to residential customers. Reliant further proposes that all data used by the EDC to determine creditworthiness be treated as confidential. Reliant also requests that it be given thirty days to present the EDCs with updated 10-Qs and 10-Ks. Reliant has also proposed additional language on how the amount of security should be adjusted when required. Reliant also proposed some other minor language changes and clarifications to the TPS Agreement.
- Constellation proposes that the 14-day customer rescission policy to legally break a TPS contract should be limited to residential customers only. Constellation also states that the \$2800 per megawatt ("MW") guarantee of payment by a TPS, in case of default, is an arbitrary number with no direct relationship to the TPS' obligation.
- Strategic asserts that the 14-day rescission period should apply to residential customers only, and that it believes the amended TPS Agreement is unclear on that issue. Strategic requests that the Board reject the changes to the credit requirements for TPSs and that there should be no other credit obligations imposed on TPSs by the EDCs. However, they contend that in lieu of the EDCs' proposed creditworthiness provisions, and only in cases where TPSs dual bill, in which the TPS and the EDC provide separate bills to the customer for their own charges, the EDCs should establish a maximum credit

requirement of the greater of \$1000 or \$70 per MW of TPS peak load obligation as a reasonable amount of security in case of default.

- MAPSA asserts that the 14-day rescission period applies to residential customers only, and that the Amended TPS agreement should be clear on that issue. MAPSA also recommends that the Board order the EDCs to eliminate all requirements for TPSs to post security with the EDCs. And finally, MAPSA recommends that the cure period, to remedy a default situation should remain at the existing 10-day period instead of the 3-day period proposed by the EDCs.

DISCUSSION AND FINDINGS

Based on its review of the proposed TPS Agreements and the comments submitted, the Board finds that the proposed changes made by the EDCs concerning the creditworthiness standards, credit obligations, and the cure period in the event of default appear to be reasonable. The creditworthiness standards and credit obligations for the TPSs are necessary to protect the EDCs and the ratepayers from financial harm. The shorter cure period proposed by the EDCs reflects past experience that some entities can potentially move rapidly into a default condition, and thus a shorter cure period will further protect all parties from financial harm. Moreover, these changes proposed by the EDCs are consistent with the current BGS Master Supplier Agreement used by the EDCs and wholesale suppliers.

As noted above, a number of parties commented on the current 14-day customer rescission period, that allows residential customers the legal right to cancel a contract signed with a TPS, within 14 days of receipt of the customer notification letter from the EDC. Although this issue is outside the scope of changes to the TPS Agreement that the Board envisioned in its May 8, 2003 Order, the Board will address this area for purposes of clarification.

This issue was discussed at length in working group meetings during 1999. Rescission rights are, and have always been, limited to residential customers only. The Board's May 5, 1999 Order (Docket No. EX94120585Y) et. al.) addresses the issue and provides for a customer notification letter with a 14-day rescission period. At the time, the Board was very concerned with the possibility of slamming, so rescission letters went to all classes of customers. The rescission letters were not intended to and do not suggest that commercial customers can abrogate their contractual obligations. According to N.J.A.C. 14:4-3.6 (b) 4, only residential customers can rescind their TPS contract in that 14-day time period. Therefore the Board does not believe that this area of the proposed TPS Agreement needs to be changed at this time.

Based on the foregoing, the Board APPROVES the amended TPS Agreements of PSE&G, JCP&L, Conectiv, and Rockland as filed, and ORDERS the EDCs to post them on their websites. The Board also DIRECTS that the EDCs use the amended TPS Agreement when entering into any future commercial relationship with third party suppliers in the EDC's service territory. The Board FURTHER DIRECTS the EDCs to execute amended TPS Agreements with its current third party suppliers and to process all required TPS documentation, including the TPS Agreement and TPS credit information, in a timely manner.

Furthermore, the Board DIRECTS all TPSs serving retail load in New Jersey, to execute the new TPS Agreement, satisfy all of its terms, and satisfy all EDC requirements prior to enrolling customers for service beginning in August 2003 and beyond. The TPS shall not submit enrollments until the EDC provides notification that it is eligible to do so. If a TPS intends to enroll new customers with BGS-CIEP meters during the July 1, 2003 through July 11, 2003

enrollment period that is required to enable an August 1, 2003 customer start of service, the EDC must receive the newly executed Agreement, and the TPS must satisfy all of the terms of the Agreement and all EDC requirements on or before July 7, 2003.

A TPS that has existing customers, but does not intend to immediately enroll new customers shall execute the Agreement by July 15, 2003, and the TPS must satisfy all of the terms of the Agreement by that same date, or the TPS' customers will be returned to BGS effective with their August 2003 meter reading date.

DATED: 6/20/03

BOARD OF PUBLIC UTILITIES
BY:

SIGNED

JEANNE M. FOX
PRESIDENT

SIGNED

FREDERICK F. BUTLER
COMMISSIONER

SIGNED

CAROL J. MURPHY
COMMISSIONER

SIGNED

CONNIE O. HUGHES
COMMISSIONER

SIGNED

JACK ALTER
COMMISSIONER

ATTEST:

SIGNED

KRISTI IZZO
SECRETARY